

Understanding Section 6032 of the Deficit Reduction Act



Passport Health Plan Provider Information

Section 6032 of The Deficit Reduction Act (DRA)



- **Overview**

- DRA is the most sweeping Medicaid legislation in decades
- Includes several provisions to eliminate fraud and abuse in Medicaid
- Focuses heavily on the health care industry and those who contract with the government

Section 6032 of The Deficit Reduction Act (DRA)



- **Provider Action Required**

- By January 1, 2007, practitioners receiving \$5 million or more per year in Medicaid funds must establish written policies for all employees, management, contractors, and agents explaining:
 - *The Federal False Claims Act;*
 - *Federal administrative remedies for false claims and statements*
 - *Any State civil or criminal penalties for false claims;*
 - *Employees' rights to whistleblower protections under the False Claims Act or State law; and*
 - *Policies and procedures of the provider (or others) for preventing and detecting fraud waste and abuse*

Section 6032 of The Deficit Reduction Act (DRA)



- Written policies must detail the entity's own guidance about its procedures for detecting fraud, waste, and abuse.
- "Large health centers" must also include a discussion of the fraud and abuse laws, its procedures for detecting fraud and abuse, and an employee's protection as a whistleblower under law and by entity policy.

Eliminating Fraud, Waste, and Abuse in Medicaid: Section 6032



Overview

- Effective 1/1/07; states that entities that receive \$5 million or more in Medicaid money annually must:
 - Educate associates about the federal False Claims Act and other state and federal laws regarding false statements
 - Educate contractors, and agents about the federal False Claims Act and other state and federal laws regarding false statements

Eliminating Fraud, Waste, and Abuse in Medicaid: Section 6032



- **Includes both state and federal laws:**
 - ***False Claims Act*** (federal)
 - ***Administrative Remedies on False Claims Statute*** (federal)
 - ***Kentucky Laws regarding fraudulent and false claims or statements*** (state)
 - ***Whistleblower Protections*** (federal and state)

The False Claims Act

Related to Section 6032 of the DRA



- **Subjects a person who acts with intent to deprive the federal government of taxpayer money to civil penalties:**
 - \$5,000 to \$10,000 fines for making a false claim
 - If found guilty, an additional fine of three times the amount of damages to the federal government is also assessed

The False Claims Act

Related to Section 6032 of the DRA



- **A minimum sentence of twice the amount of damages to the federal government applies even when the violator:**
 - Tells the federal government of the violation before 30 days has passed
 - Fully cooperates with the investigation
 - Comes forward, there is no active criminal prosecution, civil action or administrative action
 - Does not realize the government was already aware of a potential violation

The False Claims Act

Related to Section 6032 of the DRA



- **7 Primary ways to violate the False Claims Act:**

- Knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval
- Knowingly make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid or approved
- Conspire to defraud the government by getting a false or fraudulent claim allowed or paid
- Have possession, custody, or control of property or money used, or to be used, by the government, and defrauding the government by willfully concealing the property, or delivering, or causing to be delivered, less property than the amount indicated on a certificate of receipt
- With intent to defraud, make or deliver a document certifying receipt of property without complete knowledge that the information on the receipt is true
- Knowingly purchasing, or making a pledge of payment, for public property from a government employee with no right to sell or pledge it
- Knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government

The False Claims Act

Related to Section 6032 of the DRA



- **Important definitions**

- **“A Person”**

- A person is also a corporation

- **“Claim”** (Any request or demand for money or property made to contractors or others)

- If the federal government provides any portion of the money or property
 - Where the federal government will reimburse that contractor for any portion of the money or property

The False Claims Act

Related to Section 6032 of the DRA



- **Important definitions**

- **“Knowing”** and **“Knowingly”** (with respect to information)
 - Person has actual knowledge of the information
 - Person acts in deliberate ignorance of the truth or falsity of the information
 - Person acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required

The False Claims Act

Related to Section 6032 of the DRA



- **Important definitions**

- **“Qui Tam Plaintiff”**

- An individual citizen, acting on behalf of the federal government, can bring a lawsuit against anyone who violates the Act.
 - If the government prosecutes, plaintiffs can receive between 15% and 25% of any award or settlement, plus reasonable expenses
 - If the government does not prosecute, but the person prosecutes on the government’s behalf, the qui tam plaintiff can receive between 25% and 30% of an award, plus reasonable expenses

*Federal Administrative Remedies for
False Claims and Statements Statute
Related to Section 6032 of the DRA*



- **A federal law, similar to the False Claims Act, that outlines federal penalties for a person who:**
 - Has actual knowledge that a claim is false or fraudulent
 - Acts in deliberate ignorance of the truth or falsity of the claim or statement
 - Acts in reckless disregard of the truth or falsity of the claim or statement, and no proof of specific intent to defraud is required
 - These intent standards are exactly the same as those included in the False Claims Act

Federal Administrative Remedies for False Claims and Statements Statute Related to Section 6032 of the DRA



- **A civil penalty of \$5,000 or less, as well as an assessment of up to twice the amount of the claim is applied to anyone who makes, presents, or submits a claim that the person “knows or has reason to know” is:**
 - False or fraudulent
 - Includes or is supported by a written statement that includes a material fact which is false or fraudulent
 - Includes or is supported by any written statement that omits a material fact, is false based on an omission, is a statement when the person has duty to include a material fact
 - Is for the payment for the provision of property or services which the person has not provided

Federal Administrative Remedies for False Claims and Statements Statute Related to Section 6032 of the DRA



- **Important definitions**

- A “**claim**” under this statute is the same as defined in the False Claims Act
 - Each voucher, invoice, claim form, or other individual request for money, property, or services is considered a separate claim so the penalty provisions will apply more broadly
 - Claims do not have to be paid or approved to be in violation of the law

Federal Administrative Remedies for False Claims and Statements Statute Related to Section 6032 of the DRA



- **Important definitions**

- A “**statement**” includes any representation, certification, affirmation, document, record, or accounting or bookkeeping entry
 - With respect to a claim for payment
 - A contract or proposal
 - A grant, loan, or benefit from any government authority if federal money is involved

Kentucky Law

Related to Section 6032 of the DRA



- **Kentucky does not have a state False Claims Act, but has laws regarding fraudulent and false claims:**
 - **KRS 205.211:** The Cabinet for Health & Family Services can act to correct Medicaid overpayments

Kentucky Law

Related to Section 6032 of the DRA



- **KRS 205.8467:** A provider who has knowingly submitted claims for which they were not entitled to payment shall be liable for:
 - Restitution of any payments received in violation, and maximum legal rate of interest from the date of payment
 - A civil fine up to three times the amount of the overpayment
 - A civil fine of \$500 per each false or fraudulent claim submitted
 - Payment of legal fees in investigation and enforcement
 - Removal as a Medicaid provider for 2 to 6 months upon the first offense, 6 months to 1 year for second offense, and 1 to 5 years for a third offense

Kentucky Law

Related to Section 6032 of the DRA



- **KRS 205.8463:** The Cabinet for Health & Family Services can prosecute persons who:
 - Knowingly or wantonly plan or agree or conspire to work together to obtain federal Medicaid payments under false application, claim, report, or documents submitted to the Cabinet (Class A misdemeanor or Class D felony)
 - Intentionally, knowingly, or wantonly makes a false or fraudulent statement or representation of entry in a claim, report, application, or document supporting payment to the Cabinet's staff (Class A misdemeanor or Class D felony)
 - Knowingly makes, or induces a false statement or false representation of a material fact with intent to defraud (Class C felony)
 - Knowingly falsifies, conceals, or covers up a material fact, or makes false or fraudulent statements or representation, or uses false documents when handling payment issues related to Medicaid (Class D felony)

Whistleblower Protections

Related to Section 6032 of the DRA



- **Whistleblower is a popular term for someone who observes or learns of illegal activity, or activity believed to be unlawful, and reports it to either:**
 - A supervisor, compliance office, or legal counsel in the organization where the whistleblower is employed
 - To a government agency with responsibility to investigate or enforce laws regarding the alleged wrongdoing
 - To a judge during a legal hearing
 - To the media

Whistleblower Protections

Related to Section 6032 of the DRA



- **Legal protections**

- False Claims Act includes a provision to protect any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee
 - Employee is entitled to all relief necessary to make the him/her whole
 - Relief can include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorney fees

Whistleblower Protections

Related to Section 6032 of the DRA



- **Legal protections**

- Whistleblowers are also protected by various federal and state law
 - False Claims Act
 - Other federal whistleblower statutes
 - State Laws regarding whistleblowers

What Section 6032 of the DRA Means to Providers



Providers are required to cooperate with the investigation of suspected fraud and abuse. If you suspect fraud or abuse by a Passport Health Plan member or provider, it is your responsibility to report this immediately by calling one of the telephone numbers listed below:

- **Passport Health Plan Integrity Unit** (502) 585-8350
- **KyHealth Choices Hotline** (800) 372-2970
- **Office of Inspector General** (502) 564-2815
- **Amerihealth Compliance Hotline** (800) 575-0417



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